



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------------|-----------------------------|
| 10/544,118 | 04/18/2007 | John Griffin | 20184/NNR3 | 8610 |
| 81905 | 7590 | 05/19/2011 | | |
| Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago, IL 60606 | | | EXAMINER KARDOS, NEIL R | |
| | | | ART UNIT 3623 | PAPER NUMBER |
| | | | NOTIFICATION DATE 05/19/2011 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jflight@hfzlaw.com
mhanley@hfzlaw.com
docketing@hfzlaw.com

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/544,118 | GRIFFIN ET AL. | |
| | Examiner | Art Unit | |
| | Neil R. Kardos | 3623 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/27/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a **FINAL** Office Action on the merits in response to communications filed on April 1, 2011. Currently, claims 1-4 and 6-22 are pending and have been examined.

Information Disclosure Statement

The non-patent literature document cited in the Information Disclosure Statement dated October 27, 2010 was not considered (Australian Intellectual Property Office, Examiner's First Report on Patent Application No. 2004208177, dated September 11, 2010, 2 pages). This non-patent-literature document was not considered because Applicant has not provided a copy of the document.

Response to Amendment

Applicant's amendments to the claims are sufficient to overcome the claim objections and § 112 rejections set forth in the previous Office Action.

Response to Arguments

Applicant's arguments filed on April 1, 2011 have been fully considered but they are not persuasive. Applicant argues that Nyhan and Sim do not disclose the claim limitation "when the survey identifier is not detected, the data processor is to forward a survey initiation code together with a compatible measurement code to the user to complete a survey including a request for the demographic data of the user." (See Remarks, pages 7-8). Examiner respectfully disagrees.

Art Unit: 3623

Nyhan was relied on to teach "when the survey identifier is not detected, the data processor is to forward a survey initiation code together with a compatible measurement code to the user to complete a survey" (see paragraphs 18-20, 25, and 32-34; Nyhan discloses presenting a survey to a user if the cookie data indicates that the user has not previously been solicited to take a survey). Nyhan does not disclose that this survey includes demographic information of the user. Sim was relied upon to show that including demographic information in a survey was known in the art at the time of the invention (see column 6: lines 38-53, disclosing surveying users to determine demographic data; furthermore, including demographic data on surveys is extremely common, and certainly old and well-known). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references in order to request the demographic data (of Sim) in the survey (of Nyhan). One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate picture of internet usages (see Sim: column 1: lines 25-34).

Applicant specifically argues that Sim does not teach obtaining demographic data from users from a survey. (See Remarks, page 8). It is not clear how else the demographic data provided by the users in Sim would be obtained. Sim discloses that users "provide their personal details, such as where they live (region), sex, age, income, home or business user." Even if this were not a survey (which it is), Nyhan clearly discloses surveys, and Sim clearly discloses collecting demographic data, and the combination explained above is still valid. Thus, the cited references teach the argued limitation.

Claim Objections

Claims 1-4, 6-16, and 20-22 are objected to because of the following informalities:

Claim 1: Claim 1 recites "a data processor to receive, from a browser, a measurement record after the user accesses a part of the network having a portion of measurement code embedded therein, the data processor to determine from a survey identifier included in the measurement record whether a survey has been presented to the user, **when the survey identifier is not detected**, the data processor is to forward a survey initiation code together with a compatible measurement code to the user to complete a survey including a request fro the demographic data of the user." This limitation is confusing because of the way that it is worded. The wording makes it unclear whether the emphasized clause ("when the survey identifier is not detected") modifies the clause before it or after it. For the sake of clarity, Examiner recommends using a semicolon to separate the limitation "when the survey identifier is not detected, the data processor is to forward a survey initiation code together with a compatible measurement code to the user to complete a survey including a request fro the demographic data of the user" from the limitation preceding it (for example, see claim 17). The claim could also be clarified by using wherein clauses (for example, "wherein the data processor determines" rather than "the data processor to determine" and "wherein, when the survey identifier is not detected, the data processor forwards" rather than "when the survey identifier is not detected, the data processor is to forward").

Claims 1-4, 6-16, 20, and 21: It is not clear why limitations such as "the data processor forwards" were changed to "the data processor is to forward" (Claim 1) or why "the data

Art Unit: 3623

processor . . . executes . . . and sends" was changed to "the data processor . . . is to execute . . .

and to send." While not *wrong* per se, these changes make the wording of the claims awkward.

Claims 2-4, 6-16, and 22: The dependent claims are rejected for failing to remedy the deficiencies of the claims from which they depend.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nyhan (US 2003/0009372) in view of Sim (US 7,376,722).

Claim 1: Nyhan discloses a system for measuring and recording user data in a communications network, the system comprising:

- a data processor to receive, from a browser, a measurement record after the user accesses a part of the network having a portion of measurement code embedded therein (see paragraphs 17-20, disclosing cookie data associated with a website and banner ad; paragraph 25, disclosing code for deciding whether or not to solicit a user to take a survey; paragraphs 32-34, disclosing similar features), the data processor to determine from a survey identifier included in the measurement record whether a survey has been presented to the user (see paragraphs 14, 18-20,

Art Unit: 3623

25, and 32-34; the reference discloses using a cookie that keeps track of whether a user has taken a survey), when the survey identifier is not detected, the data processor is to forward a survey initiation code together with a compatible measurement code to complete a survey (see paragraphs 18-20, 25, and 32-34; the reference discloses presenting a survey to a user if the cookie data indicates that the user has not previously been solicited to take a survey);

Nyhan does not explicitly disclose the remainder of the claim limitations. Sim discloses:

- a survey including a request for demographic data of the user (see column 6: lines 38-53, disclosing surveying users to determine demographic data);
- a first electronic storage to receive survey data of the user including the demographic data and the measurement record of the user, the survey data and the measurement record identified through a user identification code (see column 6: line 54 through column 7: line 2, disclosing transmitting collected data, including demographic data and website interaction data, to a collection server and linking the interactions to the users via an identifier; see also column 10: lines 30-53; all of column 6), the survey data to provide information about the user in a market segment (see column 6: lines 1-32, disclosing that the stored data may be accessed by interested parties; column 7: lines 3-18, disclosing the same; column 9: lines 19-32, disclosing the same).

Nyhan and Sim are both directed to online surveys. Nyhan discloses determining whether a particular user has previously been surveyed after that user performs some action on a network, and if not, presenting a survey to that user. Sim discloses surveying users for

Art Unit: 3623

demographic data, linking that demographic data to the user-performed action, and making the linked data available to interested parties. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these analogous references to arrive at the claimed invention by combining Nyhan's survey decision process with the demographic survey data and linking disclosed by Sim. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate picture of internet usages (see Sim: column 1: lines 25-34) as well as for the benefit of fast and efficient information gathering without being too intrusive to internet users (see Nyhan: paragraphs 2-5). Furthermore, This combination of known elements retains the functionality of the separate elements and produces a result that would be predictable to one of ordinary skill in the art.

Claim 2: Nyhan discloses wherein prior to the data processor receiving the measurement record from the browser, the browser executes the portion of measurement code embedded in the accessed part of the network and sends a request to the data processor (see at least paragraphs 17-20).

Claim 3: Nyhan discloses wherein the data processor delivers the compatible measurement code to the browser after receipt of the request (see at least paragraphs 17-20).

Claim 4: Nyhan does not explicitly disclose second electronic storage to store the survey data and demographic data of the user. Sim discloses this limitation (see column 6: line 38

Art Unit: 3623

through column 7: line 2, disclosing collecting and storing demographic data). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 6: Nyhan does not explicitly disclose wherein the second electronic storage is to receive the survey data of the user from the data processor. Sim discloses this limitation (see column 6: line 38 through column 7: line 2, disclosing collecting and storing demographic data). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 7: Nyhan does not explicitly disclose wherein the first electronic storage is to communicate with the second electronic storage to receive the survey data of the user and the first electronic storage is to communicate with the data processor to receive the measurement record. Sim discloses this limitation (see column 6: line 38 through column 7: line 2, disclosing collecting and storing demographic data and linking it to web data via an identifier). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 8: Nyhan and Sim do not explicitly disclose wherein the first electronic storage comprises a market clickstream database. However, Nyhan and Sim at least suggests this limitation (see Nyhan: paragraph 17, disclosing clicking a banner advertisement; Sim: column 6: lines 54-60, disclosing page impressions, web site access, and time spent on a site or page). Furthermore, Examiner takes Official Notice that it was well-known in the art at the time the invention was made to track clickstream data. It would have been obvious to one of ordinary skill in the art at the time the invention was made to collect clickstream data and combine it with

Art Unit: 3623

demographic data, as suggested by Sim. One of ordinary skill in the art would have been motivated to do so for the benefit of gathering a more accurate picture of the market (see Sim: column 1: lines 19-34).

Claim 9: Nyhan does not explicitly disclose wherein the first electronic storage is to process the information for based on the survey data and measurement record of the user, and to forward the information to an online reporting database. Sim discloses this limitation (see column 6: lines 23-26; column 7: lines 3-18; column 9: lines 19-32). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 10: Nyhan does not explicitly disclose wherein the online reporting database is to provide access to the information. Sim discloses this limitation (see column 6: lines 23-26; column 7: lines 3-18; column 9: lines 19-32). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 11: Nyhan and Sim do not explicitly disclose wherein the online reporting database is to provide access to the information in response to a set of queries. However, Sim at least suggests this limitation (see column 6: lines 23-26; column 7: lines 3-18; column 9: lines 19-32). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1. Furthermore, Examiner takes Official Notice that it was well-known in the art at the time the invention was made to use queries in a reporting process. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the interested parties of Sim

Art Unit: 3623

to use queries in the reporting process. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by only viewing relevant data.

Claim 12: Nyhan does not explicitly disclose wherein the measurement record includes the user identification code. Sim discloses this limitation (see column 6: line 54 through column 7: line 2, disclosing a user identification code).

Claim 13: Nyhan does not explicitly disclose wherein the measurement record includes a cookie including the user identification code. However, Nyhan does disclose cookies (see paragraphs 17-20). Sim discloses wherein the measurement record includes a cookie including the user identification code (see column 6: line 54 through column 7: line 2, disclosing a user identification code and cookie). Nyhan and Sim are combinable for the reasons discussed above with respect to claim 1.

Claim 14: Nyhan discloses wherein the cookie includes the survey identifier, and upon detection of the survey identifier, the survey identified by the survey identifier is not delivered to the user browser (see paragraphs 17-20, 25, and 32-34; the reference discloses presenting a survey to a user if the cookie data indicates that the user has not previously been solicited to take a survey).

Claim 15: Nyhan discloses wherein, where the survey initiation code is forwarded to the user browser, the survey initiation code is appended to the measurement code forwarded by the

Art Unit: 3623

data processor and the cookie applied to the browser (see at least paragraph 34, disclosing sending a cookie to the browser to indicate that the user has taken an online survey).

Claim 16: Nyhan discloses wherein once a survey is completed by the user, the survey is associated with the user cookie and returned to the data processor for storage in the second electronic storage (see at least paragraph 34, disclosing sending a cookie to the browser to indicate that the user has taken an online survey).

Claims 17-22: Claims 17-22 are substantially similar to claims 1, 12, and 14-16, and are rejected under similar rationale.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571)270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos
Examiner
Art Unit 3623

/Neil R. Kardos/
Examiner, Art Unit 3623

/Jonathan G. Sterrett/
Primary Examiner, Art Unit 3623